

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

RICHARD L. SIMMONS,

Plaintiff,

v.

DANNY DODSON, et al.,

Defendants,

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No. 1:14CV00167 ACL

MEMORANDUM AND ORDER

This matter is before the Court on its own motion. The Court has attempted to serve defendants Bubba Unknown and Danny Dodson with process, but it has been unable to do so. The summons issued to Bubba Unknown was returned unexecuted because plaintiff has not provided the Court with enough information to serve him. The summons issued to Danny Dodson was returned because he is said to be deceased.

The Court will require plaintiff to show cause regarding why defendant Bubba Unknown should not be dismissed from this action under Rule 4(m) of the Federal Rules of Civil Procedure, which requires that service be completed within 120 days of the filing of the complaint.

Under Rule 25(a)(1) of the Federal Rules of Civil Procedure, a formal statement of death must be filed in the record and served on plaintiff to trigger the ninety-day limitation period for filing a motion to substitute parties. *E.g., Grandbouche v. Lovell*, 913 F.2d 835, 836-37 (10th Cir. 1990). Accordingly, the Court will direct the Jail Administrator and co-defendant, Janet Warren, to file either (1) a formal statement of Dodson's death, (2) a statement denying that his death occurred, or (3) a statement denying knowledge of whether his death occurred.

Finally, plaintiff has not responded to defendant Janet Warren's motion to dismiss. Plaintiff must show cause why the motion should not be granted.

Accordingly,

IT IS HEREBY ORDERED that, no later than fourteen (14) days from the date of this Order, plaintiff must show cause why defendant Bubba Unknown should not be dismissed from this action.

IT IS FURTHER ORDERED that, no later than fourteen (14) days from the date of this Order, plaintiff must show cause why defendant Janet Warren's motion to dismiss should not be granted.

IT IS FURTHER ORDERED that, no later than fourteen (14) days from the date of this Order, defendant Janet Warren must either (1) file a formal statement of Dodson's death, (2) file a statement denying that his death occurred, or (3) file a statement denying knowledge of whether his death occurred.

Dated this 5th day of May, 2015.



ABBIE CRITES-LEONI
UNITED STATES MAGISTRATE JUDGE